

DOCKET NO: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J.D. OF NEW HAVEN
	:	
V.	:	
	:	AT NEW HAVEN
YESHIVA OF NEW HAVEN, INC. FKA	:	
THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	JANUARY 27, 2020

DEFENDANT’S POST-HEARING BRIEF

The defendant, Yeshiva of New Haven, Inc. (the “Yeshiva” or the “Defendant”), respectfully submits this post-hearing brief in support of its *Motion for Order Discharging Judgment Lien and For Substitution of Bond* pursuant to Conn. Gen. Stat. § 52-380e (Doc. No. 115.00, the “Motion to Substitute”) and in opposition to the *Motion for Judgment of Strict Foreclosure*, (Doc. No. 113.00, the “Foreclosure Motion”) filed by plaintiff, Eliyahu Mirlis (“Mirlis” or the “Plaintiff”) as it relates to the property located at 765 Elm Street, New Haven, Connecticut (the “Property”) upon substitution of a bond.

I. INTRODUCTION

The Court should adopt Defendant’s valuation of the Property of \$390,000.00. Defendant’s expert applied standard appraisal procedures to find the fair market value of the property, by looking at comparable sales of publicly marketed similar properties, including ones near the subject Property. Like any real world buyer of property, Defendant’s expert also considered the environmental contamination, due to lead paint, lead in the drinking water, and asbestos, in his valuation, as well as other potential uses of the property. In contrast, Plaintiff’s appraiser used secret data, known only to him concerning two of his four allegedly comparable properties, ignored the environmental contamination, and generally did not follow standard

appraisal techniques. Therefore, only one party, Defendant, proffered reliable evidence at the hearing of this matter.

Accordingly, the Court should determine the fair market value of the Property for purposes of the Motion to Substitute to be \$390,000.00. Further, the Court should hold that Plaintiff may proceed only against the cash bond substituted by Defendant.¹

II. FACTS AND BACKGROUND

A. Procedural History

On June 6, 2017, final judgment entered against the Yeshiva and Daniel Greer (“Greer”) in the U.S. District Court case styled *Eliyahu Mirlis v. Daniel Greer, et al.*, Case No. 3:16-CV-00678 (the “District Court Case”) in the amount of \$21,749,041.10 (the “Judgment”).

Subsequently, on June 28, 2017, Greer and the Yeshiva filed a motion for new trial in the District Court Case pursuant to Fed. R. Civ. P. 59(a) (the “New Trial Motion”) seeking either an order granting a new trial or remittitur of the Judgment on the basis that the evidence could not fairly support the jury’s award of non-economic damages.

On July 7, 2017, Plaintiff filed a certificate of judgment lien (the “Judgment Lien”) against the Property with the Office of the City Clerk for the City of New Haven, Connecticut. Thereafter, on July 27, 2017, Plaintiff initiated the instant action by filing a complaint seeking foreclosure of the Judgment Lien. On October 27, 2017, Greer and the Yeshiva filed a motion for relief from final judgment (the “Motion for Relief”) in the District Court Case on grounds that newly-discovered evidence had been brought to the attention of Greer and the Yeshiva thereby warranting relief under Fed. R. Civ. P. 60(b)(2). On November 8, 2017, Plaintiff filed his Motion for Summary Judgment in the instant case.

¹ Defendant’s proposed order and form of Bond is attached hereto as Exhibit A

The District Court heard oral argument on the New Trial Motion and Motion for Relief on December 8, 2017, and denied both motions. As such, on December 15, 2017, Greer and the Yeshiva filed a Notice of Appeal indicating that Greer and the Yeshiva seek review by the United States Court of Appeals for the Second Circuit from the Judgment and the District Court's denial of the New Trial Motion and Motion for Relief.

B. Facts Applicable to the Motions Before the Court

Plaintiff initiated this action to foreclose its Judgment Lien, despite the pendency of the appeal of the underlying action. The parties agree that the value of the Property is far less than the Judgment and, thus, the issue tried to the Court concerns determination of the fair market value of the Property for purposes of the pending Motion to Substitute and Foreclosure Motion.

On October 28, 2019 and December 9, 2019, the Court (Baio, J.) heard testimony from Patrick S. Craffey, appraiser for Plaintiff, and Patrick J. Wellspeak, MAI, appraiser for Defendant.² By stipulation, the written reports of both appraisers were admitted into evidence. Craffey Report, Plf. Ex.1; Wellspeak Report, Def. Ex A.

The Property at issue is a more than 100 year old building located on the corner of Maple Street and Norton Street in New Haven. For many years, the Property has housed various versions of a “yeshiva,” or a school of Jewish learning. Merriam-Webster Dictionary, *available at*: <https://www.merriam-webster.com/dictionary/yeshiva> (visited Jan. 27, 2020). Both appraisers agree that the Property is in relatively poor condition, with substantial physical plant deficits, including sub-standard HVAC, restroom, and other facilities. 10/28/19 Tr. at 15; 12/9/19 Tr. at 14, 45. Both appraisers also agreed that due to consolidation and closure of Catholic parishes and schools, there was a substantial inventory of vacant school buildings on the

² The hearing transcripts are referenced herein as “10/28/19 Tr. at ____” and “12/9/19 Tr. at ____”. The pages referenced herein from the hearing transcripts are attached hereto as Exhibit B.

market. 10/28/19 Tr. at 20, 50-51; 12/9/19 Tr. at 19-20. Indeed, there were three recent transactions in New Haven alone, of former Catholic schools being sold. Craffey Report at 42-43, Plf. Ex. 1; Wellspeak Report at 45-47, Def. Ex. A. Despite these sales, Mr. Craffey failed to use any of them as a comparable property to value the subject Property.³ Indeed, he didn't consider any properties located in New Haven in his assessment. Further, both appraisers employed a sales comparison approach to ascertain the "market value" of the Property. Craffey Report at 41-42, Plf. Ex. 1; Wellspeak Report at 45-47, Def. Ex. A. Nevertheless, two of the properties Mr. Craffey deemed "comparable," were never publicly marketed for sale. 10/28/19 Tr. at 28, 59-60. All of the comparable properties considered by Mr. Wellspeak were publicly marketed and three of the five he reviewed were located in New Haven. Wellspeak Report at 37, Def. Ex. A.

In addition to his inspection of the Property and application of the comparable sales valuation method, Mr. Wellspeak also considered environmental contamination on the Property. As part of the appraisal process, Defendant retained a licensed environmental professional ("LEP"), WSP, USA, which prepared a Phase I Environmental Assessment, as well as performed testing concerning asbestos and lead paint (the "Environmental Testing"). Wellspeak Report at 2, Def. Ex. A; 12/9/19 Tr. at 23-29. Despite being on notice of environmental issues, Mr. Craffey ignored them. Craffey Report at 2, Plf. Ex. 1.

Therefore, in reaching his opinion of value, Mr. Craffey failed to consider how a willing buyer would seek to approach purchasing the Property, including analyzing the state of the Property and any environmental hazards, as well as actual recent sales of comparable properties in New Haven, and did not take into account actual economic conditions. As a result, Mr.

³ Both appraisers agreed that one of the properties, the former St. Peter's school, was not an appropriate comparable because of the nature of the sale.

Craffey's proposed valuation skews high. Craffey Report at 42, Plf. Ex. 1. By contrast, Mr. Wellspeak sought to identify the objective market value of the Property, concluding the value was \$390,000.00, properly applying valuation methodology. Wellspeak Report at 47, Def. Ex. A.

III. LAW AND ARGUMENT

A. The Yeshiva Has an Absolute Right to Substitute a Bond for the Fair Market Value of the Property in Lieu of the Judgement Lien

The Yeshiva seeks to substitute a cash bond as security for the Judgment in exchange for discharge of the Judgment Lien on its Property pursuant to Conn. Gen. Stat. § 52-380e. Section 52-380e provides:

When a lien is placed on any real or personal property pursuant to section 52-355a or 52-380a, the judgment debtor may apply to the court to discharge the lien on substitution of (1) a bond with surety or (2) a lien on any other property of the judgment debtor which has an equal or greater net equity value than the amount secured by the lien. The court shall order such a discharge on notice to all interested parties and a determination after hearing of the sufficiency of the substitution. The judgment creditor shall release any lien so discharged by sending a release sufficient under section 52-380d by first class mail, postage prepaid, to the judgment debtor.

Conn. Gen. Stat. § 52-380e.

In determining whether the proposed substitution is sufficient, a court must analyze both the qualitative and quantitative features of the substitution. *Jefferson v. SBD Kitchens, LLC*, 2015 WL 425156, at *1 (Conn. Super. Ct. Jan. 7, 2015). Concerns over the insufficiency of a proposed substitution often involve situations wherein a judgment debtor seeks to substitute a lien on alternative real property owned by the judgment debtor and the value of said proposed alternate property is unclear or questionable. For instance, in *Jefferson*, the court declined to permit the substitution of alternate real property when it seemed likely that the two lots offered

as substitution would be merged for zoning purposes in the near future, thereby negatively impacting the value of the properties and providing inadequate security for the judgment creditor. *Id.* at *4. Similarly, in *Harbor Federal Sav. And Loan Ass’n v. Seibold*, 1991 WL 240451, at *1 (Conn. Super. Ct. Nov. 8, 1991), in the context of a judgment debtor’s request to modify a prejudgment remedy of attachment, the court denied the substitution of an encumbered property in which the judgment debtor’s equity was \$208,000 for an unencumbered property which was worth \$210,000.00. Although the proposed substitute property was close in value, it offered a lesser degree of quality of security to the judgment creditor due to the encumbrance of a first mortgage.

Here, where a cash bond does not present issues as to the sufficiency of value and quality of the proposed substitution, unlike the above-described situations, the Court should grant the Yeshiva’s request. The Yeshiva seeks to substitute a cash bond for the Property in the amount of the fair market value of the Property, thereby providing the same security with respect to Plaintiff’s Judgment as that provided by the Property. *F.D.I.C. v. Bombero*, 37 Conn. App. 764, 768 (1995) (“Section 52-380e provides for substitution of a lien on ‘other property.’ Here, the cash that was deposited with the third party stakeholder constituted the ‘other property.’”). Further, “[t]he transfer of a judgment lien to property of equal or greater equity value is a matter of right under the statute.” *R.S. Silver Enterprises, Inc. v. Pascarella*, 2016 WL 785418, at *1 (Conn. Super. Ct. Feb. 9, 2016) (citing *Feuser v. Lampron*, 6 Conn. App. 350 (1986); see *Brainard v. Smyth Manufacturing Co.*, 178 Conn. 250, 253 (1979) (“The purpose of the statute is to make attachment security for a claim, not a weapon over the head of defendant.”)). Accordingly, the Court should permit the Yeshiva to discharge the Judgment Lien with respect to

the Property upon substitution of an acceptable bond or other security in the amount of the fair market value of the Property.

B. The Court Should Apply Defendant's Proposed Fair Market Value of the Property

Only Defendant offered a complete and accurate appraisal of the Property. Therefore, Plaintiff's appraisal testimony should be rejected and the Court should adopt Mr. Wellspeak's valuation as its finding of fair market value. "Fair market value is the price that a willing buyer would pay a willing seller based on the highest and best possible use of the land assuming, of course, that a market exists for such optimum use." *Ne. Ct. Econ. All., Inc. v. ATC P'ship*, 256 Conn. 813, 828 (2001).

"Nothing in our law is more elementary than that the trier is the final judge of the credibility of witnesses and of the weight to be accorded their testimony." *Maykut v. Shugrue*, 171 Conn. 286, 288 (1976). "The trier can accept the testimony of the experts offered by one party and reject that of the experts offered by the other." *National Folding Box Co. v. New Haven*, 146 Conn. 578, 586, 153 A.2d 420, 425 (1959). It is within the discretion of the Court whether to accept or reject expert appraisal testimony and decide how to use the information provided. *Blakeman v. Tobin*, 177 Conn. 597, 599 (1979); *Carol Mgmt. Corp. v. Bd. of Tax Review of Town of Greenwich*, 228 Conn. 23, 41 (1993) ("We have long held that [t]he question of evaluating the credibility of the appraisers is for the trial court, not this court." (Internal punctuation and citations omitted)).

Defendant's appraiser, Mr. Wellspeak, has over 30 years of experience having been qualified as an expert witness in state and federal court concerning valuation of commercial real estate. 12/9/19 Tr. at 5-7; Wellspeak Report at 53-54, Def. Ex A. Relevant to this case, Mr.

Wellspeak has appraised numerous school buildings during his career. 12/9/19 Tr. at 7. Thus, there can be no doubt that Mr. Wellspeak is well qualified to offer a valuation opinion here.

Mr. Wellspeak applied a more substantive, thorough, and objective approach to valuing the Property in comparison to Plaintiff's valuation method. First, Mr. Wellspeak used comparable properties in his valuation that were publicly marketed and sold. Wellspeak Report at 45-47, Def. Ex A. Two of the four comparable properties that Mr. Craffey, Plaintiff's appraisal expert, used were never publicly marketed for sale. One, the sale of Paier College, was not even a real estate deal. Rather it was a larger transaction, for which Mr. Craffey was retained by an interested party. 10/28/19 Tr. at 28.⁴ The other, located in Bloomfield, was sold to a long time tenant. Id. at 59-60. As Mr. Wellspeak explained, using less than three publicly available sources would not meet industry standards. 12/9/19 Tr. at 35.

More troubling, Mr. Craffey opined that the seller of the Paier property was "atypically motivated" and Mr. Craffey modified the value of the real estate based on conversations he had in his role representing a financing source in that deal. 10/28/19 Tr. at 53-54. The use of non-public and undocumented information renders his opinion suspect. By not using verifiable data, there is no objective way to ascertain the information's validity.

Compounding the use of unverifiable data, Mr. Craffey also rejected the *most* similar property – 435 Whalley Avenue, New Haven (the former St. Brendan's property) (the "435 Whalley Avenue Property") located within one mile of the subject Property – as a valuation comparable. The 435 Whalley Avenue Property was a former catholic school. It was much larger and newer, yet sold for only \$1.2 million. Wellspeak Report at 45, Def. Ex. A. The buyer of the 435 Whalley Avenue Property has put it to use as a yeshiva (Jewish school). 10/28/19 Tr.

⁴ "Q Okay. And were the conditions of the sale of the Paier College of Art typical? A. No, they were atypical. The property sold as part of a going concern, although I didn't ascribe any value to the business."

at 19. Despite the clear similarities between the subject Property and the 435 Whalley Avenue Property, Mr. Craffey did not use it as a comparable in his valuation because it contained more than one building and the sale was “below market.” *Id.* at 38; Craffey Report at 47-48, Plf. Ex.

1. Mr. Craffey’s reasons for not using the 435 Whalley Avenue Property as a comparable make no sense. Essentially, he claims that the property is far too superior to compare it to the subject Property, yet rejects it because the sale price for the 435 Whalley Avenue Property was too low. In sum, Mr. Craffey’s use of non-public sales and failing to include the 435 Whalley Avenue Property as a comparable render his appraisal not credible.⁵

Second, Plaintiff failed to consider how known environmental contamination would affect the value of the Property. Craffey Report at 12, Plf. Ex. 1.⁶ This alone renders Plaintiff’s valuation process unreliable. It is common sense that environmental contamination will affect the fair market value of property. *See ATC*, 256 Conn. at 833 (“[E]vidence of environmental contamination and remediation costs is relevant to the valuation of real property taken by eminent domain and admissible in a condemnation proceeding to show the effect, if any, that those factors had on the fair market value of the property....”) But, Mr. Craffey would not even acknowledge the value of the Property could be affected by the environmental contamination. 10/28/19 Tr. at 45, 47.⁷ Of course, Mr. Craffey’s testimony

⁵ Mr. Craffey also confirmed that no offers were made to him or any one else to purchase the Property. 10/28/19 Tr. at 63

⁶“Environmental Issues: Attorney Jeffrey M. Sklarz, who provided access to the real estate being appraised and acted as an intermediary with the ownership during the inspection, reported that flooring tiles contain asbestos and that there is an underground storage tank in the rear yard used in association with the heating system for the property. This appraisal is predicated on the extraordinary assumption that hazardous substances do not exist at the subject property.”

⁷ “Q So you're saying that you can't answer a question as to whether an environmentally contaminated – environmental contamination on a property will affect its market value? You can't answer that question? A In the context of this report, it wouldn't have any affect.”

“QGenerally speaking, you would agree with me, would you not, that environmental contamination will affect the market value of real estate, correct? A No. I wouldn't agree with that...Q I'm not asking you if you're appraising the property irrespective of contamination. I'm just saying, once you learn of contamination, common sense is [] it

contradicts his own definition of “market value” and the purpose of his appraisal to find “market value.” Craffey Report at 2, 62, Plf. Ex. 1.

On cross examination, Plaintiff’s counsel attempted to suggest that the environmental concerns were overstated. But, as Mr. Wellspeak explained, he did not simply adopt the WSP analysis. He applied deductions only for required remediation and, even then, selected the lowest cost solutions. 12/9/19 Tr. at 46 (with respect to lead paint: “I only took a fraction of what Mr. Jones came up with....”) Regardless, Plaintiff, despite having the opportunity, never even bothered to consider environmental issues by hiring its own LEP.

Third, Mr. Caffrey failed to consider potential uses for the Property *other than* as a school. Both appraisers testified there was a glut of school properties on the market. 10/28/19 Tr. at 20, 50-51; 12/9/19 Tr. at 19-20. Thus, Mr. Wellspeak analyzed what would happen if there was no demand for continued use of the Property as a school. 12/9/19 Tr. at 47-48. Mr. Craffey, however, assumed that the Property *must* remain a school. Of course, it is the market that determines how property will ultimately be used. Id. at 48-49.⁸ As a result, Plaintiff’s appraisal did not truly determine the market value for the Property, based on the definition proffered by Mr. Craffey. Craffey Report at 62, Plf. Ex. 1. Therefore, his opinion is unreliable and should be rejected.

The Court should reject Plaintiff’s proposed valuation, which uses poor data and methodology. In sum, only Mr. Wellspeak provided a valuation to establish the fair market

not, sir, that contamination will affect the market value of real property, no? A Contamination can certainly affect the sale price. It wouldn't necessarily affect the market value....”

⁸ “A If the market determines that the highest and best use is not a school, that inherently tells you that they're paying more for it as a potential apartment conversion than they're paying for it as a school. I think that if there is demand for it as a school, you'll probably get a higher number than you will if it's a use conversion, but I just don't know that that demand is going to be there. Q Did you take that into account when you [] valued this particular property? A I did. Q So you found that the - the highest and best use which you say is continued school use? A Right. Q And then you considered other uses when you when you when you came to your valuation; is that correct? A That's fair.”

value of the Property, taking into consideration actual comparables in New Haven, environmental concerns and the Property's potential use other than as a school. Therefore, the Court should find the fair market value of the Property to be \$390,000.00.

IV. CONCLUSION

For the foregoing reasons the Court should grant the Motion to Substitute and enter an order: (1) discharging the Judgment Lien on the Property; (2) substituting a bond as security for the Judgment in the form attached hereto as Exhibit A; and (3) for such further relief as this Court deems proper.

THE DEFENDANT:
Yeshiva of New Haven, Inc. fka The Gan,
Inc., fka The Gan School, Tikvah High
School and Yeshiva of New Haven, Inc.

By: /s/ Jeffrey M. Sklarz
Jeffrey M. Sklarz
Green & Sklarz LLC
One Audubon Street, Third Floor
New Haven, CT 06511
(203) 285-8545
Fax: (203) 823-4546
jsklarz@gs-lawfirm.com

CERTIFICATE OF SERVICE

This is to certify that on January 27, 2020, a copy of the foregoing was sent to all appearing parties and counsel of record as follows via electronic email:

Matthew Beatman
John L. Cesaroni
Zeisler & Zeisler, P.C.
10 Middle Street, 15th Floor
Bridgeport, Connecticut 06604
mbeatman@zeislaw.com
jcesaroni@zeislaw.com

/s/ Jeffrey M. Sklarz

Exhibit A

DOCKET NO: NNH-CV17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J.D. OF NEW HAVEN
	:	
V.	:	
	:	AT NEW HAVEN
YESHIVA OF NEW HAVEN, INC. FKA	:	
THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	

**ORDER GRANTING DISCHARGE OF JUDGMENT LIEN
ON SUBSTITUTION OF BOND**

Upon the motion (the “Motion”) filed by Yeshiva of New Haven, Inc. (the “Yeshiva” or the “Defendant”), pursuant to Conn. Gen. Stat. § 52-380e to substitute a bond as security for that certain judgment (the “Judgment”) held by Eliyahu Mirlis (“Mirlis” or “Plaintiff”) and secured by a judgment lien (the “Judgment Lien”) on 765 Elm Street, New Haven, Connecticut (the “Property”); and after a hearing on the sufficiency of the substitution and upon good cause shown therefore;

IT IS HEREBY ORDERED that the Judgment Lien on the Property is discharged; and it is further

ORDERED that Defendant may substitute a bond, or cash deposit, paid in the registry of the Clerk of the Court, as security for the Judgment; and it is further

ORDERED that the amount of the bond shall equal \$390,000.00, which amount constitutes the fair market value of the Property; and it is further

ORDERED that the bond shall be posted (or cash payment made) within sixty (60) days of the date of this Order.

Dated this ____ day of _____, 2020, at New Haven, Connecticut

The Honorable Claudia Baio
Judge of the Superior Court

Exhibit B

NO: NNH CV 17 6072389 S : SUPERIOR COURT
ELIYAHU MIRLIS : JUDICIAL DISTRICT
OF NEW HAVEN
v. : AT NEW HAVEN, CONNECTICUT
YESHIVA OF NEW HAVEN, INC. : OCTOBER 28, 2019
FKA THE GAN, INC. FKA T.

BEFORE THE HONORABLE CLAUDIA BAIO, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

ATTORNEY JOHN L. CESARONI
ZEISLER & ZEISLER, P.C.
10 MIDDLE STREET 15TH FLOOR
BRIDGEPORT, CT 06604

Representing the Defendant

ATTORNEY JEFFREY M. SKLARZ
GREEN & SKLARZ LLC
1 AUDUBON STREET 3RD FLOOR
NEW HAVEN, CT 06511

Recorded By:
Sheila Demetro

Transcribed By:
Sheila Demetro
Court Recording Monitor
235 Church Street
New Haven, CT

1 him, so.

2 THE COURT: Counsel.

3 ATTY. CESARONI: We - we can - I'll direct
4 him to the report if he doesn't recall, your
5 Honor.

6 THE COURT: Okay. Fair enough.

7 Objection then is to that extent - well, are
8 you withdrawing the question and -

9 ATTY. CESARONI: I'll - I'll withdraw the
10 question.

11 THE COURT: Okay. So there needn't be - no
12 ruling on that.

13 BY ATTY. CESARONI:

14 Q Do you remember when the - the - the improvements on
15 the property were built?

16 A It was Circa 1900 is my recollection.

17 Q Okay. And did you have any concerns about the
18 integrity of the - of the structure of the building on the -
19 on the property?

20 A I did not.

21 Q Did you inspect the HVAC systems at the property?

22 A I inspected the boiler room and the heating elements,
23 but I did not inspect any further than that.

24 Q Okay. What was your impression of the HVAC system
25 based on your inspection?

26 A It appeared to be antiquated. It's an oil fired
27 system. And some of the classrooms on the ground floor had

1 they had no plans for the - the sanctuary, the church on the
2 corner of Whalley Avenue.

3 Q Okay. And did you make a - did you draw a conclusion
4 about the desirability of the location of the property for
5 use as a school?

6 A Of the subject?

7 Q Yes.

8 A I did. I - I - based on my research and the supply
9 and demand, the environment, my determination was that the
10 school would be - the location would be average really for
11 school use.

12 Q Okay. Did - did you conclude whether or not it - it
13 directly competes with any other former Catholic schools?

14 A I did. Yeah. Because of the - the Diocese of
15 Hartford had consolidated a number of parishes in early
16 2017, a number of churches were affected and were - were
17 closed and available on the market, so there was a glut of
18 church facilities. In addition, there were some school
19 facilities that had been Parochial schools that were also
20 available, including the one associated with the - the
21 Whalley Avenue transactions that we discussed earlier just
22 north of the subject.

23 I looked at what - properties that were available
24 that I thought might compete, and none of them were in, you
25 know, proximity to the subject and - and would provide
26 direct competition.

27 Q Okay. And what is the - the decline of the limited

1 enrollment at the - the current Yeshiva school, what affect
2 does that have on the desirability of the location as far as
3 your conclusion?

4 A I was concerned when I initially inspected,
5 especially with the growth of the other Rabbinical School in
6 the neighborhood, that perhaps in the decline of this - this
7 - the Yeshiva Of New Haven, that the school population
8 demand had been tapped out by the increased supply of the -
9 of the nearby facility. In speaking with the representative
10 of that - that school, I found that that wasn't the case.

11 ATTY. SKLARZ: Objection. I believe - first
12 - first of all, it - it's hearsay. I understand
13 he's an expert and can rely on hearsay, but he's
14 not an expert in the number of students that can
15 attend the school and how that im - how that
16 impacts whether people go - whether there should
17 be more or less schools. He's here to evaluate
18 real estate, not - not the feasibility of the
19 school. So I would object to him - to him
20 testifying as to this.

21 THE COURT: Counsel?

22 ATTY. CESARONI: Well, part - part of the -
23 part of his testimony is that - will eventually be
24 elicited, that the use of - that the highest and
25 best use is as a school. And so in order to
26 establish there's demand for the school and - and
27 based on its location, I think it's important that

1 So the - as part of the - the sale process, he agreed
2 to come on for a year and stabilize operations of the
3 school, make some upgrades. And then he purchased the - the
4 property and the - and the school at the same time.

5 Q Okay. And had you previously performed appraisal
6 work with regard to the Paier College of Art?

7 A Several months before it sold, I - I appraised the
8 property.

9 Q Who did you - who did you appraise it for?

10 A I appraised it for the lending institution involved
11 in the - that provided financing for the sale.

12 Q And as - as part of that, did you perform an
13 inspection of that property?

14 A I did.

15 Q Okay. And it was - it was purchased to be used as a
16 - was it - was it purchased to be used as a - as a school
17 going forward?

18 A It was. It was purchased for a continued use as the
19 - as the same school.

20 Q And then could you describe generally the - the Learn
21 Academy property, which is the - the next comparable sale?

22 A Yes. That's located in New London, Connecticut in a
23 mixed-use area near Mitchell College. It is a former school
24 and synagogue purchased for school use. They're - the buyer
25 was going to perform significant renovations after the -
26 after the sale. The property was openly marketed through
27 Susan Howard of US Properties. And it's also similar in

1 you - did you apply criteria to select comparable sales in -
2 in this - as part of your appraisal?

3 A I did.

4 Q And what type of criteria did you apply?

5 A The comparable sales pertinent for analysis need to
6 be consistent with the highest and best use of the subject.
7 So in this case, the highest and best use is for continued
8 use as a school, and so the properties that sold also had to
9 have buyers that intended for continued school use. I
10 limited my geographical area to the State of Connecticut,
11 although I did look beyond the State and - and I - I - I did
12 limit them to - to school properties less than a hundred
13 thousand square feet as well.

14 Q And you even - and - so why did you choose just
15 school properties that were limited to school use?

16 A Because properties purchased for other uses wouldn't
17 be consistent with the highest and best use of the subject.

18 Essentially, if the subject were purchased for school use,
19 which I think would - would yield the highest price, if you
20 used properties that were purchased for a lesser use, you're
21 undervaluing the property, you're over valuing the property.

22 And you wouldn't be overvaluing it because if - if there
23 were another use, now you consider that like conversion to
24 multi-family use could be the highest and best use. If that
25 had yielded a price greater than thirty-five dollars per
26 square foot, I would have used sales of properties purchased
27 for multi-family conversion, but because that wasn't the

1 Q All right. I would - I would hope so.

2 Now, similarly, if we - you would agree, would you
3 not, that if I exploded a nuclear bomb on the subject
4 property, that would have an effect on the - on its market
5 value, correct?

6 A Assuming the date of valuation was after the bomb,
7 yes.

8 Q Fair enough. Let's assume the day before the - the
9 nuclear bomb went off, it would have an effect on your
10 value, it would affect the value of the property, correct?

11 A It wouldn't affect my value, but it would affect the
12 value.

13 Q Right.

14 A Or a value.

15 Q And that's what I'm - that's what I'm asking. If you
16 - if you - very shielded hopefully, you're going to - you
17 learn that there's been a nuclear contamination at a
18 property you're going to inspect, you - you wouldn't
19 consider it for purposes of your valuation, but you are
20 aware because you live in his world that nuclear
21 contamination will affect the market value of real estate,
22 right?

23 A Yes. Okay.

24 Q Okay. We - we can agree that nuclear contamination
25 affects the value of real estate, sir?

26 A You know, I'm not an expert on nuclear contamination.
27 And the hypothetical is such a strange one that I'm thinking

1 A - from an - from an appraisal standpoint. It would -
2 it would depend on the assignment.

3 Q The assignment is to determine the market value of
4 the real estate you're appraising, correct, that's your job?

5 A Free - free and clear of environmental contamination,
6 yes.

7 Q So what you're saying is, any appraisal you do, you
8 don't even - you never will even consider the environmental
9 impact of contamination on the property?

10 A I wouldn't say never. It would depend on the
11 assignment. Like I said, if - if - if I were specifically
12 asked to consider environmental contamination, that I - than
13 I could under those circumstances and I would delineate it
14 within the report and - yes. It's - it's possible to
15 consider environmental contamination.

16 Q Thank you.

17 Now, if you look at your report at page five, you
18 indicate, and this is discussion - discussing I believe the
19 income approach, because of the unique special purpose
20 property, there's a paucity of truly relevant comparable
21 rental and expense data from which to estimate stabilized
22 net operating income for the subject. Do you see that?

23 THE COURT: Counsel, from where are you
24 reading?

25 ATTY. SKLARZ: Page five of the report. It's
26 in the - sort of in the middle of the third full
27 paragraph down.

1 A I think what I said is that the Hartford Diocese
2 combined several parishes and that resulted in several
3 church properties being available, and to a lesser extent it
4 impacted school properties.

5 Q Now, I believe when - when you were discussing your
6 background with Miss - with Mr. Cesaroni, you indicated that
7 in the last five years you've appraised fourteen different
8 school properties; is that correct?

9 A I've had fourteen assignments including this
10 involving school properties.

11 Q Do you recall your deposition?

12 A I do.

13 Q And you recall that I asked you a number of questions
14 at - at that deposition?

15 A I do.

16 Q And do you recall being under oath?

17 A I do.

18 Q And do you - and - and at your deposition, I asked -
19 I asked the following question and this was the following
20 answer: In the past five years, what schools have you
21 appraised? Answer: Five year - five - five years, I can't
22 be sure. Several. Can you name a few? I can't off the top of
23 my head. The past five years I can't be sure when I
24 appraised the schools. But today you remember fourteen
25 schools?

26 A I refreshed. I looked at the schools I appraised
27 after the deposition, yes.

1 Q So at the deposition you testified on incomplete
2 knowledge; is that correct?

3 A That's fair to say, yes.

4 Q Okay. Now, if we turn to page twenty-eight of your
5 report, there's four school properties that you used as
6 comparables in this case. Correct?

7 A That's correct.

8 Q And only one of those properties is located in New
9 Haven County, correct?

10 A That's correct.

11 Q And none of the schools are located in New Haven
12 itself, correct?

13 A Correct.

14 Q Now, the Paier property was a property you were
15 personally familiar with, correct?

16 A I had appraised it prior to the sale, yes.

17 Q You were hired by the bank who extended the financing
18 to do the bank's appraisal, correct?

19 A That's correct.

20 Q And that - that fact was not disclosed in the report,
21 was it?

22 A No.

23 Q And the - the Paier property was never even put on
24 the market, was it - was it?

25 A That's correct.

26 Q It was, as you testified to recent - just - just a
27 few minutes ago, a buyer looking for - I'm sorry. A seller

1 Q You don't believe there's any certifications?

2 A Not in Connecticut.

3 Q Have you ever heard of an ABD designation?

4 A ABV.

5 Q Or BVA?

6 A BVA.

7 Q You don't know what those are?

8 A Business valuation assessment or - I don't know what
9 that is.

10 Q Do you have a public accounting - you don't have a
11 public accounting background, do you, sir?

12 A I do not.

13 Q Thank you.

14 Now, so as part of the Paier sale, there was bus -
15 there was business, a business sold that included real
16 estate, personal property, good will, and whatever is
17 associated with a business sale, correct?

18 A That's correct.

19 Q And you defined, I believe, the seller as atypically
20 motivated, correct?

21 A Yes.

22 Q Because they wanted to retire?

23 A I think at the time - at the meeting of the minds -

24 Q Sir, I just - I was just asking you a question. It's
25 a yes or no question.

26 A It wasn't because they wanted to retire, no.

27 Q It was not because they wanted to retire?

1 A No.

2 Q Now, if we turn to page thirty of your report, here
3 you have some information concerning the Paier property,
4 correct?

5 A Yes. On thirty and thirty-one, there's a summary -
6 that's a summary of the transaction.

7 Q And as I understand it, there were essentially two
8 pieces of real estate sold. There was a school building and
9 then some associated house or houses; is that correct?

10 A Yes, it's explained on page thirty-one, yes.

11 Q And the total sale price for all the real estate,
12 both business real estate and residential real estate, was
13 one million three hundred and fifty thousand dollars,
14 correct?

15 A That's correct.

16 Q And the parties to that transaction allocated one
17 million dollar to the business on the property, correct?

18 A No. I allocated the - the - I deducted the - based on
19 the conversations I had with the buyer, deducted three
20 hundred fifty thousand dollars as an allocation for the
21 adjacent residential properties for three adjacent lots -

22 Q And did -

23 A - and so the - so the - the million dollars was the
24 residual for the - the school.

25 Q In your report on page thirty-one tell me if I'm
26 reading this correctly, in the one, two, three - three line
27 - three paragraphs down. The one million three hundred

1 comparable?

2 A It's at the discretion of the - the appraiser and in
3 line with what our peers would do.

4 Q So it's just your subjective professional judgment?

5 A Yes.

6 Q So you chose two properties that were sold in 2014 in
7 the Hartford area as comparables here; that's correct?

8 A I did indeed. Yes.

9 Q Yet the St. Brendan's property around the corner sold
10 I believe a year or two ago, that you left off, correct?

11 A That's correct.

12 Q Now -

13 A Well, 2017. So, yes.

14 Q - the - now you didn't - you also didn't disclose
15 your relationship with the buy - with CREC in this report,
16 did you?

17 A I did not.

18 Q And this property was never exposed to the open
19 market either?

20 A That's correct.

21 Q It was never listed for sale -

22 A That's correct.

23 Q - correct?

24 It was never - there's no brokered transaction of
25 this property, correct?

26 A That's correct.

27 Q In fact, what happened was CREC, a longtime tenant,

1 ended up buying it, right?

2 A They were a tenant and they did purchase it, yes.

3 Q Sort of like that long-term tenant who bought the
4 Columbus Avenue property, bought - bought that property,
5 right? Two tenants buying properties.

6 A Sort of like I guess in - in that limited - by that -
7 in that limited statement, yeah, that's - there's - there's
8 some similarity there.

9 Q CREC - CREC the tenant bought Bloomfield. Whoever
10 the - whoever the tenant was of Columbus Avenue, bought
11 Columbus Avenue, right?

12 A I mean, the significant difference is that -

13 Q I understand you -

14 A - CREC - CREC wasn't subject to the lease whereas the
15 other tenant was.

16 Q - sir. Sir. I -

17 ATTY. SKLARZ: Your Honor, I'm just trying to
18 ask him yes or no questions and he's making
19 statements.

20 THE COURT: Sir, if you could just answer the
21 questions.

22 THE WITNESS: Okay.

23 THE COURT: If there's any follow-up, your
24 attorney will have an opportunity to ask some
25 redirect.

26 THE WITNESS: Thank you, your Honor.

27 ATTY. SKLARZ: Thank you, your Honor.

1 A That is correct.

2 Q I don't have any questions on your report right now,
3 sir.

4 What - what did you - when you toured the property,
5 what did you notice about the ceiling height in the
6 basement?

7 A It was lower than the upper floors.

8 Q Now, you - you said you spoke with some folks who
9 were interested in buying the subject property; is that
10 correct?

11 A I did.

12 Q None of them made an offer, correct?

13 A That's correct.

14 Q And - and, in fact, if they had made an offer, you -
15 that would - it wouldn't - it would be improper to consider
16 that proposal as part of a market value appraisal such as
17 this, correct?

18 A That's not correct. No. If they had made an offers,
19 I would - I would be obliged to consider it.

20 Q If they had made an offer, you would have been
21 obliged to consider it; that's your testimony?

22 A Absolutely.

23 Q Okay. Now, when you prepare a sales comparison
24 approach, you use closed sales to determine the value,
25 correct?

26 A I do. Some people can - don't always, but yes, I do.
27 There's have been occasions where I've used pending -

NO: NNH CV 17 6072389 S

: SUPERIOR COURT

ELIYAHU MIRLIS

: JUDICIAL DISTRICT
OF NEW HAVEN

v.

: AT NEW HAVEN, CONNECTICUT

YESHIVA OF NEW HAVEN, INC.
FKA THE GAN, INC. FKA T.

: OCTOBER 28, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Claudia Baio, Judge, on the 28th day of October, 2019.

Dated this 31st day of December, 2019 in New Haven, Connecticut.



Sheila Demetro
Court Recording Monitor

NO: NNH CV 17 6072389 s : SUPERIOR COURT
ELIYAHU MIRLIS : JUDICIAL DISTRICT
OF NEW HAVEN
v. : AT NEW HAVEN, CONNECTICUT
YESHIVA OF NEW HAVEN, INC. : DECEMBER 9, 2019
FKA THE GAN, INC. FKA T.

BEFORE THE HONORABLE CLAUDIA BAIO, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

ATTORNEY JOHN L. CESARONI
ZEISLER & ZEISLER, P.C.
10 MIDDLE STREET 15TH FLOOR
BRIDGEPORT, CT 06604

Representing the Defendant:

ATTORNEY JEFFREY M. SKLARZ
GREEN & SKLARZ LLC
1 AUDUBON STREET 3RD FLOOR
NEW HAVEN, CT 06511

Recorded By:
Sheila Demetro

Transcribed By:
Sheila Demetro
Court Recording Monitor
235 Church Street
New Haven, CT

1 A Sure. Three jobs. Out of college I worked for a
2 company called the Rogers Corporation as a financial
3 analyst for one year. And then in 1986 I went to the firm
4 of Edward Heberger and Associates in Cheshire and worked as
5 a commercial real estate appraiser there from '86 to '95.
6 And then in 1995 I left with two other associates there and
7 formed our own firm, Wellspeak Dugas & Kane, where I remain
8 employed today.

9 Q And do you have any professional designations?

10 A Yes, I do.

11 Q And can you tell us about that?

12 A Sure. I - I'm a member of the Appraisal Institute.
13 I have the MAI designation. I'm also an associate member of
14 the Society of Industrial and Office Realtors; and an
15 associate member of the Institute for Real Estate
16 Management.

17 Q How do you - how does one obtain these designations?

18 A So for the MAI designation, which is the one most
19 pertinent to this particular assignment, it's a multi-step
20 process. There's educational requirements in terms of
21 courses on appraisal that you have to take. You have to
22 also have your work experience peer reviewed. And you need
23 five years of credible work experience. Then you have to
24 complete a demonstration report which is the equivalent of
25 a thesis showing an independent body that you understand
26 all the appraisal concepts; and then lastly, a
27 comprehensive exam.

1 Q And do you also - do you have to - do you perform any
2 continuing education in the regular course of your work?

3 A Yes, I do.

4 Q And can you tell us about that?

5 A So there's two ways that I have to achieve continuing
6 education requirements. I'm a certified general appraiser
7 in the State of Connecticut. So the State requires twenty-
8 eight hours of continuing education every two years; and
9 then as part of my MAI designation, the Appraisal Institute
10 requires a hundred hours of continuing education every five
11 years.

12 The Appraisal Institute's requirement can be met
13 through the State stuff, but I'll say it's the more onerous
14 of the two getting a hundred and five years (sic).

15 Q And can you just tell us what - what has your work
16 consisted generally over the - over the past, you know,
17 twenty years or so you've been doing this?

18 A Oh, it's thrity.

19 Q Thirty years.

20 A Yes.

21 Q Yes. Sorry.

22 A That's okay.

23 Q Bad math.

24 A Yeah. So over the past thirty years, it's really been
25 a - a focus on commercial properties, and that would
26 include office buildings, industrial buildings, larger
27 multi-family apartment complexes, and a lot of special

1 purpose properties whether they be theaters, schools,
2 stadiums, things like that. We - our firm does golf
3 courses, and I've done some of those.

4 Q And can you tell us a little bit about your prior
5 experience appraising school buildings?

6 A Sure. I've appraised a number of schools over the
7 years. I'd say probably in the range of ten to twelve.

8 Among some of the larger ones that I did, I appraised
9 E.O. Smith High School, which is adjacent to the University
10 of Connecticut. The University was looking at buying the
11 property to expand their campus, and E.O. Smith, which was
12 a regional high school, was going to build a new school on
13 some other land that UCONN had.

14 I appraised Sacred Heart Academy in Stamford. That
15 was a property that was a parochial school that had shut
16 down and the City of Stamford was looking to acquire it.

17 I appraised a - a former parochial school in
18 Waterbury.

19 And I've done a number of public schools that were
20 bought my muni - or sorry - sold by municipalities for
21 things like community centers or use conversions to multi-
22 family residential or office space.

23 Q And have you been qualified to provide expert
24 appraisal testimony in - in the federal and state courts in
25 Connecticut?

26 A Yes, I have.

27 ATTY. SLKARZ: Your Honor, at this time I'd

1 Q If we turn to page twelve, what are these pictures
2 showing?

3 A So page twelve are pictures of the lower level. And
4 so the top picture is a commercial kitchen. The Yeshiva
5 School, while it was in operation, made meals there. And so
6 part of the issue with the building, as I indicated, the
7 lower level has this English basement with either smaller
8 windows or in some areas where the topography changes, no
9 windows at all, so the kitchen was put into the front of the
10 building where there aren't any windows. You know, it's
11 kind - it's where you'd have mechanical areas, you'd have
12 areas that just don't require natural light, so that's a
13 view of the kitchen.

14 One of the other things that can be observed from
15 looking at that is that the height is reduced compared to
16 floors one and two. And there's also piping and duct work
17 and things like that that further reduce the clear height as
18 opposed to the floor to ceiling height.

19 The second picture on that page at the bottom of page
20 twelve is the central corridor in the basement area. So
21 similar to the upper floors, floors one and two that have a
22 - a very large corridor, the basement area has that as well.

23 There's a gymnasium. There was an art room. And
24 then the commercial kitchen. The mechanical rooms were down
25 there like the old - the boiler room and an old room where
26 they used to -

27 Q Tell me about -

1 And so the first course of action when a broker goes
2 to sell a property like that is to say, you know, it can
3 keep being used as a school and you can buy it for that or
4 you could look at it for re-use alternatives. And I think a
5 property like the subject, it's very old and has a lot of
6 functional drawbacks for use as a school. You're either
7 going to get a private school to buy it or you're going to
8 get somebody that's going to want to reuse the asset and
9 more than likely convert it to multi-family.

10 Q Okay. And in trying to - and in - and in determining
11 that, what - what - what research did - did you do? Did -

12 A For - in determining the highest and best use?

13 Q Yes. Did you talk to anyone -

14 A Yeah, I mean -

15 Q - did you have any records?

16 A Yeah. Well, again, I rely on my other experience of
17 working with other school properties and seeing what
18 happens. And for something that's relatively modern and at
19 a smaller size, there's a lot of times a good chance that it
20 could be bought for continued use as a school. This property
21 is kind of on the boarder. It's a little larger, and as I
22 said, it has some functional drawbacks for continued use as
23 a school, some of which are tied to environmental, some of
24 which are not. The oversized hallways, the limited number
25 of classrooms, the fact that bathrooms are only on one
26 floor. Those are among the challenges.

27 So again, I think if you find the - the needle in the

1 haystack buyer, you may get someone that wants it for a
2 school or they want it for like a rehab center or some -
3 that - that kind of use. If you don't, then I think you put
4 it, you know, the market is probably going to tell you, we -
5 we have no need for it for that use and we're going to look
6 at it for a - a reuse.

7 Q Okay. And the - the building in general, how do you
8 - what do you consider it? How do you - how did you find
9 the physical plan?

10 A It's a 1900 building and it shows it.

11 Q Now, another topic you considered, and you had men -
12 I think you had mentioned this earlier, is you considered
13 environmental issues. And if we look at page twenty -
14 beginning on page twenty-four of your report, the - you -
15 you describe the site, including the neighborhood, and then
16 into the specific improvements of the school on page twenty-
17 seven. How did - well, why did you consider environmental
18 issues in - in preparing your appraisal?

19 A I - I was requested to consider the environmental
20 issues in the appraisal.

21 Q And - and does - does - are there standards of
22 appraising when considering environmental issues?

23 A There are not standards. There are advisory opinions
24 within USPAP about environmental.

25 Q And - and is there any special training that is
26 offered in terms of how to deal with environmentally
27 distressed property?

1 you handle that?

2 A So again, it came - I started by reading Mr. Jones'
3 report and then asked for the call with him because he had
4 come up with cost estimates for those four items that I
5 identified.

6 Q So let's just - let's just roll it back a little bit.
7 What was the asbestos - what's your understanding as
8 to what the asbestos issue was?

9 A Asbestos in the floor tiles.

10 Q So these are floor tile -

11 A The floor tiles are -

12 Q - these are floor tiles?

13 A - in the basement and the stairwells.

14 Q Okay. And why would there be asbestos in those floor
15 tiles -

16 A There -

17 Q - to the best of your knowledge?

18 A They're old. I mean, it was a product that was used
19 at one time.

20 Q Okay. And so how - what - how did you consider - how
21 did you treat the asbestos issue in your report? I'm sorry.
22 In your appraisal?

23 A Sure. So Mr. Jones had come up with a total estimate
24 for dealing with the flooring issue, the asbestos issue, of
25 a hundred and forty-nine thousand five hundred dollars.

26 Of the total, a hundred and seven thousand dollars
27 was for abatement or removal. And then forty-two thousand

1 five hundred was for installing a new floor. A new floor
2 once that abatement had concluded. So one of the things
3 that I asked him was, could you encapsulate the asbestos as
4 opposed to removing it by putting a flooring level over the
5 tiles that exist. And he said, yes, you could.

6 So in all of the instances of the four categories
7 that I mentioned, I tried to come up with what I felt was
8 the most cost-effective way of dealing with the problem, not
9 just taking his, what I'll call worst case estimate of
10 spending to the max, but rather if there's a more effective
11 way of doing it at a lower cost, concluding to that option.

12 Q Okay. So with respect to the asbestos, it was to put
13 new floor over the old floor?

14 A Right.

15 Q And that - and that -

16 A That was forty-two thousand five hundred dollars.

17 Q Okay.

18 A As opposed to a hundred and forty-nine thousand five
19 hundred dollars.

20 Q Okay. And that information is on page seven of -
21 twenty-seven of your report where - where it says floors; is
22 that correct?

23 A That's correct.

24 Q Now, how did you treat the - the lead in the water
25 issue?

26 A That's in the plumbing section I believe.

27 Q And that would be, I believe, on page twenty-nine?

1 A It's on twenty-eight and twenty-nine. So on twenty-
2 eight it's identified - well, this whole thing on plumbing
3 talks about where the bathrooms are and that water fountains
4 are located on the first and second floor.

5 The WSP had identified that there was lead in the
6 drinking water and they gave a number of cost alternatives
7 for dealing with that. It ranged from fifteen thousand
8 dollars on a low end to a hundred thousand dollars on a high
9 end.

10 The hundred thousand dollar way of dealing with it
11 was a lot new piping. It was very expensive way of solving
12 it. I asked them, well, what's the fifteen thousand dollar
13 way, and he said that there's an automated system that could
14 be installed that would inject chemicals into the water to
15 make it suitable for drinking. And so again, it solves the
16 problem at a lower cost alternative, so that's what I went
17 with on the solving the lead in the water issue.

18 Q Okay. How about the lead in the - the lead paint
19 issue?

20 A So he broke that down - or his total cost on the lead
21 paint for - with the windows was seven hundred and fifty
22 dollars per window. And I asked him, well, what is that
23 going to get you? And what that's going to get you is a
24 removal of the old window that has lead and - and disposal
25 of that window as well as a brand new window. And so I
26 said, well, how much is the cost of removal and disposal
27 versus the cost of the brand new window? Of the seven

1 hundred and fifty dollar per window costs, one twenty-five
2 was for the removal of the windows, plus a ten thousand
3 dollar disposal fees.

4 Q Excuse me.

5 A That's okay.

6 The balance was for brand new windows.

7 Again, I didn't want to use his number of seven fifty
8 because if I have brand new windows in the building, I have
9 a - I'll say a better building than what I'm appraising. And
10 so if I was going to include that total cost, I would have
11 valued the building for more then made a larger deduction.
12 Instead all I did was take off the one twenty-five per
13 window for the removal plus the ten thousand dollar disposal
14 fee for those old windows.

15 Q Okay. And I think the fourth issue is the
16 underground storage tank.

17 A Correct.

18 Q How did you deal with that?

19 A So the underground storage tank, he had a cost
20 estimate that - bear with me. On page twenty-six. And so -

21 Q And this starts on - it's the -

22 A The top of twenty-six.

23 Q - issues start on page twenty-five and over on to
24 page twenty-six?

25 A Right.

26 So he recommended that the in-place underground
27 storage tank be removed and replaced at a cost of forty to

1 forty-five thousand dollars as it had exceeded its life
2 expectancy. He also recommended a study for a phase two
3 subservice investigation.

4 One of the things that I discussed with him is that
5 somebody who acquires this building may not necessarily go
6 with the same type of heating system that's in place today.

7 They may replace the heating system. You could go to
8 rooftop units. You can go to heat pumps. There's a -
9 there's a lot of different ways that you could do it, in
10 which case you'd have to remove the underground storage
11 tank, but you wouldn't necessarily have to replace. If you
12 go with a rooftop package HVAC unit, you're not going to
13 have to put in an underground storage tank. You're not
14 going to need that.

15 So again, I felt his options were, I'll say best case
16 to worst case, and - from a cost prospective. And, you
17 know, the worst case was, you're going to have to spend
18 forty to forty-five thousand dollars on it. The best case
19 is you're just going to have to remove the tank at a cost of
20 ten.

21 Ultimately, I don't know what heating avenue a
22 potential purchaser is going to pursue, so I - I'll say I
23 compromised at something in the middle and deducted twenty-
24 five thousand dollars for the underground storage tank
25 issue.

26 Q So if we turn to page twenty-nine of your report in
27 the section that says environmental towards the bottom, you

1 calculate up the sums and you reach a conclusion as to how
2 much you're going to deduct for environmental. What - what
3 is your - what is your conclusion regarding the
4 environmental deductions?

5 A So my conclusion was the deduction of a hundred and
6 ten thousand dollars for the environmental issues, which is
7 a fraction of what Mr. Jones had in what I'll call his
8 worst-case scenario.

9 Q Okay. Now, what would - what would you say the
10 effect of the age of this building is, as you said, over a
11 hundred years old? What is the effect of the age on some
12 of these issues?

13 A The effective age?

14 Q The effect of the age.

15 A The effect of the age?

16 Q Since it's an old building. What -

17 A Yeah, I mean, it - it leads to more maintenance. It
18 leads to higher utility costs because you don't have windows
19 that are going to keep the heat in. The building doesn't
20 have air conditioning other than a couple sleeve units.
21 You're not an ABA complaint building. There's no elevators.
22 Bathrooms only on one level. I mean, it's nothing you'd -
23 if you were building a new school today, you're never doing
24 it this way.

25 Q Now, in determining what the value of the property
26 was, you - you went with the sales comparison approach?

27 A I did.

1 Q And if we turn to page thirty-seven of your report,
2 this is a summary of the five comparables you used?

3 A That's correct.

4 Q Why did you pick - well, let's start this way. What
5 was your process for coming up with these comparable
6 properties?

7 A We subscribe to various data base services to give us
8 leads on comparables. The two services that we subscribe to
9 are Concomp and Co-Star. And so I'll put parameters in and
10 I'll say start normally very narrow. Like, show me sales of
11 schools in New Haven that range from ten thousand to fifty
12 thousand square feet. In a perfect world, there'd be eight
13 or ten of them and you'd have plenty of data, and you can
14 say, I'm - I'm just going to stick to the City of New Haven.

15 Unfortunately, with properties like this, that
16 doesn't tend to be the case, so we expand the - the net and
17 we'll expand our geography, maybe the parameters on building
18 size, and come up with as many comparables as - as we can
19 and then start exploring those comparables to find out if
20 the sales are arm's-length transactions between non-related
21 parties, to find out if the buildings are physically like
22 the subject, location like the subject.

23 So we again, start by going through data bases, start
24 by doing research online to try and identify potential
25 comparables, and then after doing some research on them,
26 picking the ones we think are the best.

27 Q Okay. And do you - after - after you whittle them

1 having some variety in your comparables is helpful. And
2 then I think there's just some, I'll - I'll say some
3 influences in the industry where when people do residential
4 appraisals, the like Fanny Mae and Freddie Mac require a
5 minimum of three. And so I think it's become like a, you
6 know, an urban legend that you - you have to have three.

7 Q Now, turning to page forty-seven of your report,
8 here's where you summarize your adjustments that you make to
9 the comparables and - and reach your conclusions as to
10 market value. Can you just explain what's going on in that
11 adjustment grid on page forty-seven?

12 A Yeah. So the - you'll see there's - there's a
13 summary of the sales, the addresses, and the unit prices
14 that they went on - went for, in other words, the prices per
15 square foot that they transacted at. And at the top it says
16 unadjusted sale price per square foot. That's the actual
17 sale price for each of these properties divided by the
18 amount of square footage.

19 Underneath that we have what are referred to as
20 elements of comparison. And those are the factors within
21 our professional training that we're taught to adjust for.
22 Whether it's property rights conveyed, financing terms,
23 conditions of sale, market conditions. Those are - to
24 explain them, financing terms would be if I sold a property
25 for four hundred thousand dollars but I held a purchase
26 money mortgage at a very favorable rate, maybe, you know,
27 one percent interest rate, somebody might pay more for a

1 reviewed his report and then had conversations with him.

2 Q Okay. And Mr. - Mr. Jones' report had a narrative in
3 the beginning; isn't that right?

4 A That's correct.

5 Q And then it was followed by several appendices,
6 right?

7 A Correct.

8 Q And it was about five hundred pages or so of
9 appendices?

10 A It was a lot of pages.

11 Q But you didn't review the appendices separately, just
12 the narrative, right?

13 A No, I - I mean, quite candidly, it's beyond my level
14 of technical understanding. I did what I'm trained to do in
15 these instances which is, in my certification to say that we
16 relied on the significant professional assistance of someone
17 who does have that expertise, which was Mr. Jones, and have
18 the conversations with him to make sure I understood the
19 points he was making.

20 Q Okay. So you didn't - so you don't know - you don't
21 have the expertise to understand exactly what he did, right?

22 A No.

23 Q Okay. And you - you - so you're just relying upon,
24 you know, what he's telling you and what's in the report,
25 and - and that's it?

26 A Yes, because that's his expertise.

27 Q Okay. Did you do any type of independent inspection

1 of any lead contamination either in the water supply or in
2 the windows?

3 A I did not.

4 Q Okay. Do you know how many of the windows Mr. Jones
5 tested in - in evaluation whether or not there was lead
6 paint?

7 A I don't recall, but I believe it was a fairly small
8 sample.

9 Q Okay. And there are a number of windows in the
10 building, correct?

11 A Yes.

12 Q So if - if, for example, it turned out that windows
13 he didn't test didn't have lead paint, would that change
14 your deduction for environmental costs?

15 A Well, as I indicated earlier in my direct exam, I
16 only took a fraction of what Mr. Jones came up with. It was
17 the hundred and twenty-five dollars per window for removal
18 and then a ten thousand dollar disposal fee. If the number
19 of windows that were impacted was less, then the figure that
20 I came up with would come down.

21 Q And you have no way of knowing if it was one of the
22 windows that was impacted or all of them?

23 A I personally don't.

24 Q Do - based on your review of Mr. Jones' report, did
25 he know how many of the windows were impacted?

26 A I believe his assumption was that all of them were
27 impacted, but I don't believe that he tested each and every

1 one.

2 Q Okay. Just to - he just tested a small sample,
3 right?

4 A Correct.

5 Q Okay. So for the highest and best use of the
6 property, your ultimate conclusion was the highest and best
7 use of this property is continued use as a school building;
8 is that right?

9 A I said that - that - that it should be continued use
10 as a school, however, in that same paragraph, I said that if
11 there's no demonstrated demand for this use, the property
12 should be re-evaluated for use alternatives that would
13 primarily be residential oriented.

14 Q But ultimately you chose that the highest and best
15 use for this particular property was to be used as a school,
16 right?

17 A Again, I said that is his preferred option, but I do
18 have concerns over whether there will be demand for that
19 use, and so I did want to have a fallback position on that.

20 Q So are you saying you don't know if the highest and
21 best use is as a school or as - for example, conversion to
22 residential?

23 A Well, I think ultimately the market is going to tell
24 you that when you list the property for sale. I think all of
25 these properties that are of this age and condition, that
26 they get exposed to the market with a plethora of use
27 alternative that include continued use as a school or

1 conversion to residential. And I think the men or women who
2 list them for sale wait to see what the market is going to
3 tell them. And again, I think the easiest thing to do, the
4 thing that's going to require the least amount of capital
5 investment, would be for it to be continued use as a school,
6 but I do have concerns that there will be demand for that.
7 And I think that the only way you're going to know the
8 answer to that is when you test the market.

9 Q So the highest and best use is as a school unless
10 it's not, right?

11 A Yeah.

12 Q Okay. And you - you believe that there's a premium -
13 there would be a premium for someone who bought it as a
14 school, right?

15 A Versus an alternative use?

16 Q Well, let - let me ask this, would - generally
17 speaking, do you believe that the property would sell for
18 more as a school than it would as say a conversion to
19 residential hous - housing?

20 A If - if somebody wants to use it as a school, then -
21 then I do believe that.

22 Q Okay. But you also con - so you considered that it
23 would be a lower value that somebody would pay if they were
24 going to convert it to apartments, right?

25 A If the market determines that the highest and best
26 use is not a school, that inherently tells you that they're
27 paying more for it as a potential apartment conversion than

1 they're paying for it as a school.

2 I think that if there is demand for it as a school,
3 you'll probably get a higher number than you will if it's a
4 use conversion, but I just don't know that that demand is
5 going to be there.

6 Q Did you take that into account when you - you valued
7 this particular property?

8 A I did.

9 Q So you found that the - the highest and best use
10 which you say is continued school use?

11 A Right.

12 Q And then you considered other uses when you - when
13 you - when you came to your valuation; is that correct?

14 A That's fair.

15 Q Okay. Okay. So if we could look at page thirty-
16 seven which is your comp table. I have a few questions
17 about each of these.

18 A Sure.

19 Q So for the - the first one is 234 240 and 250 Greene
20 Street in New Haven, correct?

21 A Correct.

22 Q And that - that was a single building located -
23 located in New Haven, obviously?

24 A Yes.

25 Q And in your - in Exhibit A on - on page thirty-seven,
26 that first column under sale one, there's a proposed use row
27 which is just under billing - building data.

NO: NNH CV 17 6072389 s

: SUPERIOR COURT

ELIYAHU MIRLIS

: JUDICIAL DISTRICT
OF NEW HAVEN

v.

: AT NEW HAVEN, CONNECTICUT

YESHIVA OF NEW HAVEN, INC.
FKA THE GAN, INC. FKA

: DECEMBER 9, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Claudia Baio, Judge, on the 9th day of December, 2019.

Dated this 26th day of December, 2019 in New Haven, Connecticut.

A handwritten signature in blue ink, appearing to be 'Sheila Demetro', written over a horizontal line.

Sheila Demetro
Court Recording Monitor